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ABSTRACT

When the Supreme Court decided that the Constitution requires public school principals to follow procedural due process in suspension and expulsion cases, the Justices recognized a link between procedural due process and the fairness of effective discipline. This report reviews the constitutional due process required when public school officials are investigating allegations of student misconduct and determining disciplinary sanctions, and advocates its use, even when not legally required, as a step toward ensuring fairness in every disciplinary decision. The following topics are discussed: (1) codes and student conduct; (2) constitutional due process and fundamental fairness; (3) constitutional due process for long-term suspensions and expulsions; (4) suspension or expulsion of handicapped students; and (5) conclusion and recommendations. (78 endnotes) (MLF)

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A Legal Memorandum

JANUARY 1990 *National Association of Secondary School Principals* ISSN 0192-6152

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Procedural Due Process and Fairness in Student Discipline

Representing a profound attitude of fairness between man and man, and more particularly between the individual and government, 'due process' is compounded of history, reason, the past course of decisions, and stout confidence in the strength of the democratic faith which we profess.[1]

Americans value fair play as a fundamental attribute of freedom. That expectation of fair treatment encompasses not only the government, but also the public schools.

Principals know the importance of fairness in the administration of student discipline. Their common wisdom is that discipline is most effective when it is "firm but fair," and they strive to achieve that standard even when it is impossible to obtain consensus among teachers, students, and parents about exactly what firmness and fairness demand in specific cases.

Since the Magna Carta, our legal system has relied on procedural due process as one means of ensuring fairness when the government deals with individuals. Our Bill of Rights and Fourteenth Amendment incorporate procedural due process to guarantee freedom from arbitrary actions by federal or state government. In the words of Supreme Court Justice Felix Frankfurter: "The history of American Freedom is, in no small measure, the history of procedure."[2]

When the Supreme Court decided that the Constitution requires public school principals to follow procedural due process in suspension and expulsion cases, the Justices recognized an undeniable link between procedural due process and the fairness that principals know is the hallmark of effective discipline. The Court said the Constitution requires procedural due process as a precaution "against unfair or mistaken findings of misconduct," and it described the mandated procedures as being "if anything, less than a fair-minded school principal would impose upon himself in order to avoid unfair suspensions."[3]

This *Legal Memorandum* reviews the procedural due process that the United States Constitution requires—referred to herein as constitutional due process—when public school officials are investigating allegations of student misconduct and determining disciplinary sanctions, and advocates its use, even when not legally required, as a step toward ensuring fairness in every disciplinary decision.

Of course, a fair, effective, and legally defensible student discipline system must incorporate more than procedural due process; it must also recognize the substantive limitations that federal and state law impose on the school's authority to control students, some of which have been the subjects of other *Legal Memoranda*.[4]

Constitutional Due Process

That state and local school officials have comprehensive authority to maintain good order and discipline in public schools is an axiom of American law.[5] Indeed, the Supreme Court has observed:

> By and large, public education in our Nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values.[6]

Beginning as early as 1923, however, the Supreme Court has recognized the Fourteenth Amendment's admonition that no State shall "deprive any person of life, liberty, or property, without due process of law" as one of those "basic constitutional values" that limit the

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power of the States to regulate their public schools and students.[7] After the High Court said in 1954 that "Education is perhaps the most important function of state and local governments,"[8] many lower courts came to view a student's access to public education as an interest protected by the constitutional due process requirements of the Fourteenth Amendment.[9] The Supreme Court implicitly supported that conclusion in 1969, when it ruled that "Students in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect . . . ."[10]

In 1975, in *Goss* v. *Lopez*,[11] the Justices explicitly held that when a State chooses to establish public schools and extends the right to a public education to children generally, school disciplinary actions that touch either the student's property or liberty interests are subject to the constitutional due process requirements of the Fourteenth Amendment.

> The authority possessed by the State to prescribe and enforce standards of conduct in its schools although concededly very broad, must be exercised consistently with constitutional safeguards. Among other things, the State is constrained to recognize a student's legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that Clause . . . .
>
> The Due Process Clause also forbids arbitrary deprivation of liberty. "Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him," the minimal requirements of the clause must be satisfied . . . . School authorities here suspended appellees from school for periods of up to 10 days based on charges of misconduct. If sustained and recorded, those charges could seriously damage the student's standing with their fellow pupils and their teachers as well as interfere with later opportunities for higher education and employment. It is apparent that the claimed right of the State to determine unilaterally and without process whether that misconduct has occurred immediately collides with the requirements of the Constitution.[12]

Since the *Tinker* decision, the constitutional due process required by the Fourteenth Amendment has become the minimum that public school principals must follow before suspending students for 10 days or less. In some states, this minimum constitutional due process has been codified in state law.[13] But other states have chosen to give students more procedural protection in all discipline cases or have established special procedures for specific punishments.[14] In addition, codes of student conduct and similar local school board regulations may specify procedures that go beyond the requirements of federal and state law.

All these state and local requirements must, of course, be known and followed by principals in the jurisdictions to which they are applicable because the courts will enforce them.[15] Thus, a thorough understanding of the due process required by state law and local regulations is an essential complement to knowledge of the constitutional due process reviewed in this *Legal Memorandum*.

Codes and Student Conduct

Constitutional due process requires that students be forewarned of conduct that may result in disciplinary sanctions. Written codes of student conduct, posted in the school and distributed annually to students and parents, are the usual way of placing students on notice about proscribed behaviors. The school's code of student conduct must incorporate applicable state law and recognize students' substantive constitutional rights.

The Supreme Court has held that school rules need not be as detailed as a criminal code, and it has cautioned the lower courts against substituting their judgment for that of school officials regarding the meaning of school regulations.[16] Nevertheless, the code of student conduct must be written in language as clear and unambiguous as possible if it is reasonably to warn students what specific conduct is prohibited.

Language so vague it leaves students guessing about what behavior is forbidden may not be enforced by the courts. For example, rules proscribing "conduct inimical to the best interests of the school," prohibiting students from possessing "medicine," and banning "extreme hair styles," have been judged not to provide adequate notice.[17]

Oral notice of a regulation may satisfy the constitutional requirement if school officials can show that the oral notice did in fact warn the students about the proscribed behavior. In a Texas high school, the grade penalty for violation of the school's rule against alcohol use was carefully explained to students at assemblies. A court later upheld application of the grade penalty to students who were proven to have attended the assemblies even though they denied any knowledge of the penalty.[18] But oral notice increases the risk that the rule may be communicated incorrectly and that students may misunderstand its import. Written regulations are preferred and should be used whenever possible.

More details and greater specificity are required in

regulations that touch students' First Amendment rights of expression.[19] Codes of student conduct should include a complete explanation of the procedural rights students have in cases of suspension or expulsion. They should be reviewed annually by the educational staff to ensure appropriate and complete content and by the district's legal counsel in light of changing legal requirements.

Constitutional Due Process and Fundamental Fairness

Constitutional due process is not a fixed set of procedures; its requirements, which always seek to achieve fundamental fairness, vary according to the disciplinary sanction to be imposed. In the words of the United States Court of Appeals for the First Circuit:

> Due process, which may be said to mean fair procedure, is not a fixed or rigid concept, but, rather, is a flexible standard which varies depending upon the nature of the interest affected, and the circumstances of the deprivation. . . . The time-honored phrase "due process of law" expresses the essential requirements of fundamental fairness. Yet, it "does not impose an unattainable standard of accuracy." Hence, the procedures employed in a disciplinary action must be tested by the extent to which they comport with the requirement of fundamental fairness.[20]

The "fundamental fairness" that constitutional due process seeks to guarantee requires, at a minimum, that a student facing a serious disciplinary sanction be given: (1) notice of the charges against him or her and the evidence supporting them, and (2) the opportunity for a hearing at which he or she can defend himself or herself. In its now famous 1975 decision in *Goss* v. *Lopez*, the Supreme Court explained how these procedures can be applied in a public school.

> . . . due process requires, . . . that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story. . . . There need be no delay between the time notice is given and the time of the hearing. In the great majority of cases the disciplinarian may informally discuss the alleged misconduct with the student minutes after it has occurred. We hold only that, in being given an opportunity to explain his version of the facts at this discussion, the student first be told what he is accused of doing and what the basis of the accusation is.[21]

In *Goss*, the Supreme Court held that the Fourteenth Amendment requires this minimum constitutional due process when a student is facing a suspension of up to 10 days because his property interest in his education and his liberty interest in his reputation are substantial enough to warrant constitutional protection. The Court said the required notice and hearing generally must be afforded to the student before he is removed from school. But the Justices added that students "whose presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process" may be immediately suspended. In such cases, the Court said the required notice and hearing can be provided as soon as practicable after the suspension.

The Court also observed that suspensions for more than 10 days and expulsions may require more formal procedures and that in "unusual situations" even a short suspension may require more than the minimum constitutional due process.[22]

In the 15 years since *Goss*, the lower courts have generally rebuffed arguments that constitutional due process should be required before the imposition of disciplinary sanctions less serious than suspension or expulsion. A decision of the United States Court of Appeals for the Tenth Circuit has influenced many other courts. In 1976, the Tenth Circuit rejected assertions by high school students that, by implication, the *Goss* decision made a student's participation in athletics a constitutionally protected civil right.

The Court ruled instead that the property right the Supreme Court recognized in *Goss* was the right to participation in the educational process; there was no suggestion that a student has a constitutionally protected interest in participation in each of the separate components—athletics, clubs, social events, etc.—that comprise the educational process.[23]

Following similar reasoning, other courts have ruled that constitutional due process is not required before decisions about participation in athletics,[24] membership on the cheerleading squad,[25] removal from bus transportation,[26] cancellation of a school play,[27] entrance into an honor society,[28] who shall play 1st trumpet in the band,[29] participation in the graduation ceremony,[30] exclusion from attendance at school activities,[31] dismissal from school for failure to pay tuition,[32] or assignment to an in-school suspension that maintains the student's educational process.[33]

In 1977, the Supreme Court itself decided that prior notice and hearing are not required by the Fourteenth Amendment before the administration of corporal punishment.[34]

In addition, the courts have consistently ruled, both before and after *Goss*, that the minor punishments so traditionally a part of school discipline—counseling, admonition, reprimand, after-school detention, additional assignments, restriction during free periods, and isolation within the classroom—do not require constitutional due process.[35] Note, however, that several federal courts have ruled that constitutional due process is required when students are to be transferred from one educational program to another for disciplinary reasons.[36]

There are good reasons for using constitutional due process when making any disciplinary decision, even if it is not legally required. The skeletal notice and hearing procedures that the Supreme Court mandated for short-term suspensions, what the Court called "an informal give-and-take between student and disciplinarian,"[37] are flexible and informal enough to be used easily by both teachers and administrators before imposing any disciplinary sanction.

A consistently applied practice of telling students what they are accused of doing and the evidence against them (notice), and allowing them an opportunity to explain their version of the facts (hearing) *before* imposing any punishment contributes to achieving the goal of fundamental fairness. There need be no loss of informality and flexibility when imposing sanctions less than suspension, and the consistent use of these simple notice and hearing procedures increases the students' perception of having been treated fairly.

Most courts have been unwilling to make constitutional due process for short-term suspensions (10 days or less) more complex than the informal notice and hearing described by the Supreme Court in *Goss*.

Federal appellate courts have rejected arguments that a 10-day suspension imposed during the final exams has a long-term effect that demands more formal due process,[38] that the principal must tell students of the possible punishments when informing them of the rule they violated and the supporting evidence,[39] that students are entitled to know the identity of and cross-examine a student accuser,[40] and that schools must have an appellate mechanism to review the principal's decision to suspend.[41]

In *Goss* the Supreme Court refused to require that the informal hearing preceding a short-term suspension include "trial-type procedures."[42] Other federal courts have reiterated the reason: school disciplinary hearings are not criminal proceedings and therefore the constitutional protections afforded those accused of crimes are not applicable in school discipline hearings.[43]

Accordingly, students are not entitled to a *Miranda*-type warning before school personnel question them about violations of school regulations,[44] the rule against hearsay evidence does not apply,[45] and suspension of a student from school while criminal charges are pending against him does not constitute double jeopardy.[46]

The courts' unwillingness to expand the requirements of constitutional due process beyond those established in *Goss* has not diminished their insistence that students receive the required informal notice and hearing whenever they face suspension.

For example, a federal judge in Virginia decided that an elementary student suspended for assaulting fellow students and teachers was denied constitutional due process because he was not given a hearing within 72 hours following the suspension. The court recognized that an immediate suspension without advance constitutional due process was justified by the student's physical aggression, but it ruled that the superintendent's decision to postpone the student's hearing until the next school board meeting 29 days later violated the requirement in *Goss* that the hearing take place as soon as practicable after the suspension.[47]

Constitutional Due Process for Long-Term Suspensions and Expulsions

Recognizing the potentially serious consequences that a long-term suspension or expulsion may have for the student, many states have enacted statutes or school district regulations to establish specific notice and hearing procedures. These laws and regulations must, at a minimum, guarantee the constitutional due process required by the Fourteenth Amendment. They may also impose whatever additional procedures state legislators or local school boards deem appropriate, and the courts often require strict compliance with requirements written in state laws and local regulations.

A Louisiana appellate court invalidated the expulsion of a student for use of marijuana off school grounds because the state school law under which he was charged prohibited possession of marijuana only on school grounds or in school buses.[48]

A federal court in Michigan awarded damages against a principal and superintendent who issued a valid short-term suspension but later extended it to encompass the rest of the school year without affording the student the hearing procedures the school board's rules required for expulsions.[49]

The Supreme Court did not specify in *Goss* just how

formal notice and hearing procedures must be to satisfy constitutional due process for suspensions beyond 10 days and expulsions. As early as 1961, however, the United States Court of Appeals for the Fifth Circuit said that students facing expulsion from a tax-supported college are entitled to more than informal procedures.

In that influential case, the Fifth Circuit held that although a full-dress judicial hearing is not a constitutional prerequisite, the student must be given formal notice "of the specific charges and grounds which, if proven, would justify expulsion" and a chance to defend himself at a hearing that "gives the Board....an opportunity to hear both sides in considerable detail."[50]

Since that decision, other federal and state courts have outlined the specific notice and hearing process necessary for long-term suspensions and expulsions from public schools. Once again, it is important to emphasize that these are the minimum procedures that will satisfy constitutional due process; any additional requirements in state law or school district regulations must also be followed.

The written notice of charges given to the student and his or her parents prior to the hearing should be delivered in a way that will ensure receipt and permit proof of delivery. The notice must be given far enough in advance of the hearing to afford the student a reasonable opportunity to prepare a defense. Precisely how far in advance will depend on the circumstances of the case. Some federal courts have held that five days should be the minimum in expulsion cases,[51] and an Illinois appellate court decided that the student's right to notice was violated when he was not informed of the evidence against him until the day of the hearing.[52]

The notice must:

- Inform the student of the specific charges, which, if proven, would justify the proposed punishment under previously existing rules of the school district
- Specify the evidence supporting the charges
- State when, where, and before whom the hearing will be held
- Identify the student's procedural rights during the hearing.

A timely notice should be sent in all cases, even when the student has admitted the violations and may later waive his right to a hearing.

The statement of charges need not be drawn with the specificity required in criminal cases, but it must include all charges to be heard and must be detailed enough to enable the student to prepare a defense.

For example, a Florida court decided that a notice charging possession of "what appeared to be marijuana" was sufficient to warn the student that he was being accused of violating the school's rule against possession of marijuana (the school had no rule prohibiting possession of "what appeared to be marijuana").[53] An appellate court in Illinois, however, disallowed a notice that charged "gross misconduct, disobedience, and disrespect" because it did not inform the student of the specific conduct for which he was to be disciplined.[54]

Notification must include the date, time, and place of the hearing and the procedural rights available to the student. The United States Court of Appeals for the Fifth Circuit decided that girls facing long-term suspensions did not receive adequate notice when they were told only that school board meetings were always open, were not informed of the time and place at which the School Board would consider their cases, and no notice of any kind was provided to their parents.[55]

The Supreme Court of Mississippi, citing both legal and Biblical authority, ruled invalid a notice giving the date of the hearing but failing to state the procedural protections available under the school board's rules.[56]

An opportunity to be heard is, in the words of the Supreme Court, "The fundamental requisite of due process of law," and "an impartial decision maker is essential."[57] Many states require that hearings on long-term suspensions and expulsions be heard by the superintendent, the school board, or a designated hearing officer.

Courts have held that an employee of the school district may serve as the hearing officer if his impartiality is ensured.[58] A principal, however, should not serve as the hearing officer in a case arising in the building because the principal's duty to investigate misconduct, gather evidence of rule violations, and make recommendations concerning long-term suspensions and expulsions militates against impartiality.[59]

In an Ohio case, school board members discussed with the superintendent the damage done to school property by two students, and they advised him on the appropriateness of expulsion before he reached his decision to expel the students. The court concluded that this prior involvement in the case destroyed the board members' impartiality when they later heard the students' appeals.[60]

Because constitutional due process is a flexible concept, the courts have not always agreed on the minimum procedural protections that must be afforded the student during the hearing. Indeed, the Supreme Court has said:

> Whether the Constitution requires that a particular

> right obtain in a specific proceeding depends upon a complexity of factors. The nature of the alleged right involved, the nature of the proceeding, and the possible burden on that proceeding, are all considerations which must be taken into account.[61]

Following that guidance, many courts have held that constitutional due process is satisfied when the student is permitted during the hearing to be represented by legal counsel or other adult, to examine the evidence, to present witnesses and information in his or her defense, and to confront and cross-examine the teachers or administrators giving evidence against him or her.[62]

Both the Supreme Court of Mississippi and the United States Court of Appeals for the Eighth Circuit have voided expulsions because the students were not permitted to cross-examine the accusing teachers.[63]

But the right to cross-examine does not necessarily include the right to know the identity of, or to cross-examine, fellow students who may have given statements to school officials in support of the charges.[64]

The United States Court of Appeals for the Sixth Circuit has decided that a student facing expulsion on a drug charge was not deprived of constitutional due process when he was denied the right to cross-examine or know the identity of students who had provided accusatory information. The court said: "We conclude that the necessity of protecting student witnesses from ostracism and reprisal outweighs the value of the truth-determining process of allowing the accused student to cross-examine his accusers."[65]

A federal appellate court in Texas reached the same conclusion in the case of a student facing suspension for the remainder of the year. The statements other students had given accusing him of selling marijuana were read to him at the hearing, but their identities were not revealed nor was he permitted to cross-examine them. The court concluded that constitutional due process had not been violated, saying that the technicalities of criminal procedures should not be transported into school discipline hearings.[66]

Constitutional due process requires that the decision of the hearing authority be based on "substantial evidence" presented at the hearing.[67] A Florida court ruled that a school board's decision to expel a student for selling pills represented to be "speed."was not based on substantial evidence because at the hearing no proof was presented that the student actually did represent the pills to be "speed."[68]

A federal appellate court in Ohio concluded that a student was deprived of constitutional due process when, after the hearing, the superintendent gave the school board in executive session additional evidence to support the charges.[69] In a similar ruling, a Louisiana court rejected a school board's attempt to justify an expulsion on rule violations that were not considered at the student's hearing.[70]

Suspension or Expulsion of Handicapped Students

Handicapped students are, of course, entitled to the same constitutional due process that their nonhandicapped peers must receive under similar circumstances. Thus, a handicapped student facing a suspension of 10 days or less must be given at least the informal notice and hearing outlined in *Goss*.[71]

But in many instances, suspension or expulsion of a handicapped student must be preceded by the more complex notice and hearing procedures that federal law requires when a change in educational placement is proposed for a handicapped student.

The federal Education of the Handicapped Act (the Act) directs that parents of a handicapped student be given notice and the opportunity for an impartial due process hearing before a school district may change the student's educational placement. The Act also stipulates that when the parent decides to use these procedural protections, the student must remain in the then-current placement until all proceedings are completed, including the judicial appeals the Act allows, unless parents agree to an interim placement. This provision of the Act is known as the "stay-put" rule.[72]

Federal courts have ruled that suspensions of more than 10 days and expulsions are actions that effectively change a handicapped student's educational placement and thus trigger the Act's notice and hearing requirements, including the "stay-put" rule if parents appeal. These courts have concluded that before imposing a long-term suspension or expelling a handicapped student, a group of specially trained professionals must determine whether the student's behavior is caused by the handicap. If so, the student may not be given a long-term suspension or expelled, but school officials may use the change of placement procedures provided in the Act to move the student to a more restrictive educational environment.

If the behavior is not caused by the handicap, the student may be suspended for a long term or expelled, but parents may use the Act's impartial due process hearing procedures to challenge the expulsion. If they do, the student remains in school under the "stay-put" rule.[73]

The Supreme Court decided in 1988 that the "stay-put" rule applies even to violent and dangerous handicapped students. In *Honig* v. *Doe*, California school officials argued that Congress could not have intended the "stay-put" rule to require that violent or dangerous handicapped students remain in their current placements during the months and years often necessary to complete appeals under the Act. They said Congress must have believed that school officials' state law authority to remove such students would operate as an exception to the rule.

The Supreme Court decided, however, that there are no exceptions to the "stay-put" rule even for violent and dangerous students. But the Court said application of the rule does not prevent schools from using their normal procedures for dealing with handicapped students endangering themselves or others.

> Such procedures may include the use of study carrels, timeouts, detention or the restriction of privileges. More drastically, where a student poses an immediate threat to the safety of others, officials may temporarily suspend him or her for up to 10 school days . . . . And in those cases in which the parents of a truly dangerous child adamantly refuse to permit any change in placement, the 10-day respite gives school officials an opportunity to invoke the aid of the courts . . . .[74]

The Supreme Court's decision allows school officials to overcome the "stay-put" rule by petitioning a federal court to enjoin a violent and dangerous handicapped student from attending school. The Court said that when school officials seek such judicial relief, the Act creates a presumption in favor of maintaining the child in his current placement and that school officials can overcome the presumption only by "showing that maintaining the child in his or her current placement is substantially likely to result in injury either to himself or herself, or to others."[75]

An Illinois school district has successfully used this procedure in the case of a 17-year-old autistic male who presented a danger of sexual violence to staff members and other students.[76]

Handicapped students not receiving special education services under the Education of the Handicapped Act may nevertheless be covered by Section 504 of the Rehabilitation Act of 1973.[77] The Department of Education's Office for Civil Rights, which is responsible for administrative enforcement of Section 504, holds that students covered by Section 504 must be afforded essentially the same procedural protections before long-term suspension or expulsion as are available to students receiving special education under the Education of the Handicapped Act.[78]

The existence in federal law of these specific and more complex procedural protections for handicapped students, which do not apply to nonhandicapped students, means that principals must carefully determine the status of a student whenever suspension or expulsion is a consideration so that the proper procedural paths will be followed.

Conclusion and Recommendations

The informal notice and hearing procedures the Supreme Court fashioned 15 years ago in *Goss* v. *Lopez* remain the minimum that will satisfy constitutional due process for suspensions of 10 days or less. State law or school district regulations may require more. Most courts have been unwilling to expand constitutional due process by imposing more formal and complicated procedures for short-term suspensions, but they consistently enforce the requirement that a student be afforded at least the minimal notice and hearing mandated in *Goss*.

Except for disciplinary transfers of students from one school to another, the courts have also refused to require that constitutional due process preceded disciplinary sanctions less serious than suspension. The use of an informal notice and hearing procedure similar to constitutional due process is, however, recommended before teachers or administrators impose any discipline because it contributes to fundamental fairness and increases students' perceptions of fair play.

Constitutional due process for long-term suspensions and expulsions requires much more formal notice and hearing procedures; in many states, laws or school district regulations impose specific additional requirements.

If a student qualifies as handicapped under either the Education of the Handicapped Act or Section 504, federal law demands a very detailed and complex notice and hearing process that does not apply to nonhandicapped students. For all these reasons, the school district's written procedures for handling long-term suspensions and expulsions should be prepared with the assistance of legal counsel.

Endnotes

1. Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 162 (1951) (Frankfurter, J., concurring).
2. Malinski v. New York, 324 U.S. 401, 413-14 (1945).
3. Goss v. Lopez, 419 U.S. 565, 581, 583 (1975).
4. "Students with AIDS." *Legal Memorandum*, September 1989; "The Changing Shape of Students' Rights." *Legal Memorandum*, April 1988; "Disciplining Students for Out-of-School Misconduct." *Legal Memorandum*, September 1988; "Student Privacy and School Responsibility." *Legal Memorandum*, March 1987; "U.S. Supreme Court Reviews Student Freedom of Speech: Bethel School District v. Fraser." *Legal Memorandum*, September 1986; "Academic Penalties for Attendance Reasons." *Legal Memorandum*, March 1985; "School Administrators and Law Enforcement Officials." *Legal Memorandum*, September 1985; "The Student's Privacy: A Developing Concept. Part Two: School Searches." *Legal Memorandum*, April 1983; and "The Student's Privacy: A Developing Concept. Part One: Student Records." *Legal Memorandum*, January 1983.
5. Meyer v. Nebraska, 262 U.S. 390 (1923); Epperson v. Arkansas, 393 U.S. 97 (1961); Boykins v. Fairfield Bd. of Ed., 492 F.2d 697 (5th Cir. 1974), *cert. denied*, 420 U.S. 962 (1975); and Lee v. Macon County Bd. of Ed., 490 F.2d 458 (5th Cir. 1974).

6. Epperson v. Arkansas, 393 U.S. 97, 104 (1968).
7. Meyer v. Nebraska, 262 U.S. 390 (1923); Pierce v. Society of Sisters, 268 U.S. 510 (1925); West Virginia State Board v. Barnette, 319 U.S. 624 (1943); Goss v. Lopez, 419 U.S. 565 (1975); and Ingraham v. Wright, 430 U.S. 651 (1977).
8. Brown v. Board of Education, 347 U.S. 483, 493 (1954).
9. Dixon v. Alabama State Bd. of Ed., 294 F.2d 150 (5th Cir. 1961), *cert. denied*, 368 U.S. 930 (1961); Vought v. Van Buren, 306 F.Supp. 1388 (E.D. Mich. 1969); Whitfield v. Simpson, 312 F.Supp. 889 (E.D. Ill. 1970); Farrell v. Joel, 437 F.2d 160 (2d Cir. 1971) Pervis v. LaMarque, 466 F.2d 1054 (5th Cir. 1972); and Tate v. Board of Education, 453 F.2d 975 (8th Cir. 1972).
10. Tinker v. Des Moines School District, 393 U.S. 503, 511 (1969).
11. 419 U.S. 565 (1975).
12. 419 U.S. at 574-75 (1975). A student's property interest in public education is created by state laws extending an entitlement to public education. 419 U.S. at 572-73. The United States Constitution does not grant individuals a "right" to a public education. Plyler v. Doe, 457 U.S. 202 (1982); and San Antonio Ind. Sch. Dist.,v. Rodriguez, 411 U.S. 1 (1973).
13. See, e.g., Katchak v. Glasgow Ind. Sch. Dist., 690 F.Supp. 580 (W.D. Ky. 1988).
14. See, e.g., Mrs. A.J. v. Spec. Sch. Dist. No. 1, 478 F.Supp. 418 (D.Minn. 1979); Reasoner v. Meyer, 766 S.W. 2d 161 (Mo.App. 1989); White v. Salisbury, 588 F.Supp. 608 (E.D.Pa. 1984); and Bystrom v. Fridley, 686 F.Supp. 1387 (D.Minn. 1987).
15. Mifflin Co. Sch. Dist., v. Stewart, 503 A.2d 1012 (Pa.Com. 1986); Mrs. A.J., v. Special Sch. Dist. No. 1, 478 F.Supp. 418 (D.Minn. 1979); Sykes v. Sweeney, 638 F.Supp. 274 (E.D.Mo. 1986); W.A.N. v. Sch. Bd. of Polk Co., 504 So.2d 529 (Fla.App. 2 Dist. 1987); and Underwood v. Bd. of Ed., 498 N.Y.S.2d 907 (A.D.3 Dept. 1986).
16. Bethel Sch. Dist. v. Fraser, 478 U.S. 675 (1986); Wood v. Strickland, 420 U.S. 308 (1975); and Bd. of Ed. v. McCluskey, 458 U.S. 966 (1982).
17. Mitchell v. King, 363 A.2d 68 (Conn. 1975; Bertens v. Stewart, 453 So.2d 92 (Fla.App. 2 Dist. 1984); and Meyers v. Arcata Union H.S. Dist., 269 Cal.App. 2d 549 (1969).
18. New Braunfels Ind. Sch. Dist. v. Armke, 658 S.W.2d 330 (Tex.App. 10 Dist. 1983). See also, Guzick v. Drebus, 431 F.2d 594 (6th Cir. 1970).
19. Eisner v. Stamford, 440 F.2d 803 (2d Cir. 1971); and Baughman v. Freienmuth, 478 F.2d 1345 (4th Cir. 1975). But see the Supreme Court's decisions in Bethel Sch. Dist., v. Fraser, 478 U.S. 675 (1986) and Hazelwood Sch. Dist. v. Kuhlmeier, 108 S.Ct. 562 (1988).
20. Gorman v. University of Rhode Island, 837 F.2d 7 (1st Cir. 1988).
21. Goss v. Lopez, 419 U.S. 565, 581-82 (1975).
22. 419 U.S. at 582-84.
23. Albach v. Odle, 531 F.2d 983 (10th Cir. 1976).
24. Walsh v. Louisiana H.S. Ath. Assoc., 616 F.2d 152 (5th Cir. 1980); Mississippi v. Farris, 501 So. 2d 393 (Miss. 1987); and Makanui v. Dept. of Ed., 721 P.2d 165 (Hawaii App. 1986). Denials of participation that touch a student's substantive constitutional protections may be subject to judicial scrutiny. Saint v. Nebraska Sch. Act. Assoc., 684 F.Supp. 626 (D.Neb. 1988).
25. Haverkamp v. Unified Sch. Dist., 689 F. Supp. 1055 (D.Kan. 1986).
26. Rose v. Nashau Bd. of Ed., 679 F.2d 279 (5th Cir. 1982).
27. Bell v. U-32 Bd. of Ed., 630 F.Supp. 939 (D.Vt. 1986).
28. Price v. Young, 580 F.Supp. 1 (D.Ark. 1983); and Karnstein v. Pewaukee Sch. Bd., 557 F.Supp. 565 (E.D.Wisc. 1983).
29. Bernstein v. Menard, 557 F.Supp. 92 (E.D.Va. 1983).
30. Mifflin Co. Sch. Dist. v. Stewart, 503 A.2d 1012 (Pa.Com. 1986).
31. Boster v. Philpot, 645 F.Supp. 798 (D.Kan. 1986).
32. Daniels v. Morris, 746 F.2d 271 (5th Cir. 1984).
33. Cole v. Newton, 676 F.Supp. 749 (S.D.Miss. 1987); *aff'd.*, 853 F.2d 924 (5th Cir. 1988); Wise v. Pea Ridge Sch. Dist., 675 F.Supp. 1524 (W.D.Ark. 1987); and Fenton v. Stear, 423 F.Supp. 767 (W.D.Pa. 1976).
34. Ingraham v. Wright, 430 U.S. 651 (1977). State law and local regulations, however, frequently require specific procedures in corporal punishment cases.
35. Linwood v. Bd. of Ed., 463 F.2d 763 (7th Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972); and Dickens v. Johnson County Bd. of Ed., 661 F.Supp. 155 (E.D.Tenn. 1987).
36. Jordan v. Sch. Dist., 583 F.2d 91 (3d Cir. 1978); Betts v. Bd. of Ed., 466 F.2d 629 (7th Cir. 1972); and Everett v. Marcase, 426 F.Supp. 397 (E.D.Pa. 1977).
37. 419 U.S. at 584.
38. Keough v. Tate, 748 F.2d 1077 (5th Cir. 1984).
39. Palmer v. Merluzzi, 868 F.2d 90 (3d Cir. 1989).
40. Paredes v. Curtis, 864 F.2d 426 (6th Cir. 1988).
41. Brewer v. Austin Ind. Sch. Dist., 779 F.2d 260 (5th Cir. 1985).
42. 419 U.S. at 583.
43. Brewer v. Austin Ind. Sch. Dist., 779 F.2d 260 (5th Cir. 1985); and Sykes v. Sweeney, 638 F.Supp. 274 (E.D.Mo. 1986).
44. Adams v. Dothan, 485 So.2d 757 (Ala.Civ.App. 1986); In re Cory L., 203 C.A.3d 1020 (Cal.App. 1 Dist. 1988); and Boynton v. Casey, 543 F.Supp. 995 (D.Me.1982).
45. Boykins v. Fairfield Bd. of Ed., 492 F.2d 697 (5th Cir. 1974), *cert. denied*, 420 U.S. 962 (1975); Tasby v. Estes, 643 F.2d 1103 (5th Cir. 1981); Brands v. Sheldon, 671 F.Supp. 627 (N.D.Iowa 1987); and Jones v. Pascagoula Mun. Sep. Sch. Dist., 524 So.2d 968 (Miss. 1988).
46. Paine v. Board of Regents, 335 F.Supp. 199 (W.D.Tex. 1972), *aff'd. per curiam.*, 474 F.2d 1397 (5th Cir. 1973); and Schank v. Hegde, 521 N.E.2d 9 (Ohio Com. Pl. 1987).
47. Doe v. Rockingham Co. Sch. Bd., 658 F.Supp. 403 (W.D.Va. 1987).
48. Labrosse v. St. Bernard Parish Sch. Bd., 483 So.2d 1253 (La.App. 4 Cir. 1986). See also, Sykes v. Sweeney, 638 F.Supp. 274 (E.D.Mo. 1986); and Darby v. Schoo, 544 F.Supp. 428 (W.D.Mich. 1982).
49. Darby v. Schoo, 544 F.Supp. 428 (W.D.Mich. 1982).
50. Dixon v. Alabama State Bd. of Ed., 294 F.2d 150, 158-59 (5th Cir. 1961), *cert. denied*, 368 U.S. 930 (1961).
51. Linwood v. Board of Education, 463 F.2d 763 (7th Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972); and Vought v. Van Buren Pub. Schools, 306 F.Supp. 1388 (E.D.Mich. 1969).
52. Stratton v. Wenona, 526 N.E. 2d 201 (Ill.App. 3d Dist. 1988).
53. Walter v. School Board, 518 So.2d 1331 (Fla.App. 4 Dist. 1987).
54. Stratton v. Wenona, 526 N.E.2d 201 (Ill.App. 3 Dist. 1988). See also, Keller v. Fochs, 385 F.Supp. 262 (E.D.Wis. 1974).
55. Strickland v. Inlow, 519 F.2d 744 (5th Cir. 1975).
56. Warren Co. Bd. of Ed. v. Wilkinson, 500 So.2d 455 (Miss. 1986).
57. Goldberg v. Kelly, 397 U.S. 254, 267, 271 (1970).
58. Rucker v. Colonial Sch. Dist., 517 A.2d 703 (Sup.Ct.Del. 1986); and Graham v. Knutzen, 351 F.Supp. 642 (D.Neb. 1972).
59. Sullivan v. Houston Ind. Sch. Dist., 475 F.2d 1071 (5th Cir. 1973), *cert. denied*, 414 U.S. 1032 (1973).
60. Schank v. Hegele, 521 N.E.2d 9 (Ohio Com.Pl. 1987).
61. Hannah v. Larche, 363 U.S. 420, 442 (1960).
62. Sykes v. Sweeny, 638 F.Supp. 274 (E.D.Mo. 1986); Rucker v. Colonial Sch. Dist., 517 A.2d 703 (Sup.Ct.Del. 1986); Anable v. Ford, 653 F.Supp. 22 (W.D.Ark. 1985); Dillon v. Pulaski Co. Sp. Sch. Dist., 468 F.Supp. 54 (E.D.Ark. 1978), *aff'd.*, 594 F.2d 699 (8th Cir. 1979); and Jones v. Pascagoula Mun. Sep. Sch. Dist., 524 So.2d 968 (Miss. 1983).
63. Warren Co. Bd. of Ed. v. Wilkinson, 500 So.2d 455 (Miss. 1986); and Dillon v. Pulaski Co. Sp. Sch. Dist., 594 F.2d 699 (8th Cir. 1978).
64. Graham v. Knutzen, 351 F.Supp. 642 (D.Neb. 1972); Brewer v. Austin Ind. Sch. Dist., 779 F.2d 260 (5th Cir. 1985); and Newsome v. Batavia Local Sch. Dist., 842 F. 2d 920 (6th Cir. 1988).
65. Newsome v. Batavia Local Sch. Dist., 842 F.2d 920, 925 (6th Cir. 1988).
66. Brewer v. Austin Ind. Sch. Dist., 779 F.2d 260 (5th Cir. 1985).
67. Linwood v. Board of Ed., 463 F.2d 763 (7th Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972); Givens v. Poe, 346 F.Supp. 202 (W.D.N.C. 1972); Walter v. Sch. Bd., 518 So.2d 1331 (Fla.App.4 Dist. 1987); and Jones v. Pascagoula Mun. Sep. Sch. Dist., 524 So.2d 968 (Miss. 1988).
68. McEntire v. Brevard Co. Sch. Bd., 471 So.2d 1287 (Fla.App. 5 Dist. 1985).
69. Newsome v. Batavia Local Sch. Dist., 842 F.2d 920 (6th Cir. 1988).
70. Labrosse v. St. Bernard Parish Sch. Bd., 483 So.2d 1253 (La.App. 4 Cir. 1986).
71. Doe v. Rockingham Co. Sch. Bd., 658 F.Supp. 403 (W.D.Va. 1987).
72. 20 U.S.C. Sec. 1400 *et seq.* The notice requirements are set out in the regulations at 34 C.F.R. Sec. 300.505.
73. Stuart v. Nappi, 443 F.Supp. 1235 (D.Conn. 1978); S-1 v. Turlington, 635 F.2d 342 (5th Cir. 1981); Kaelin v. Grubbs, 682 F.2d 595 (6th Cir. 1982); and Sch. Bd. of Prince Wm. Co. v. Malone, 762 F.2d 1210 (4th Cir. 1985). Both the Fifth and Sixth Circuit decisions hold, somewhat enigmatically, that even when handicapped students have been expelled through appropriate procedures, the school district may not terminate all educational services.
74. Honig v. Doe, 108 S.Ct. 592, 605 (1988).
75. 108 S.Ct. at 606.
76. Bd. of Ed. v. Corral, #89-C-3905 (U.S.D.C. N.D. Ill. 5/18/89).
77. 29 U.S.C. Sec. 794.
78. Memorandum, L.S. Daniels to OCR Senior Staff, Oct. 28, 1988, EHLR 131:64-69.

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